*** THE HON'BLE Ms. JUSTICE G. ROHINI**

+ WRIT PETITION NO.16030 OF 1995

% 22/03/2007

 # 1. Koneti Ramachandra and 2 others. ... Petitioners

Vs.

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1. The Special Officer-cum-Principal District Munsif, Punganur, Chittoor District., and 4 others. .. Respondents

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> Head Note:

! Counsel for the petitioners : Sri T.S. Anand
Sri Y. Srinivasa Murthy

^ Counsel for the respondents : Govt. Pleader for Revenue

Cases referred :

[1] AIR 1971 Supreme Court 742

2 AIR 1982 Supreme Court 948 (1)

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16030 OF 1995

DATED: 22-03-2007

Between :

1. Koneti Ramachandra and 2 others. ... Petitioners

And

2. The Special Officer-cum-Principal District Munsif, Punganur, Chittoor District., and 4 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16030 1995

ORDER :

This writ petition is filed questioning the order dated 13-4-1995 in ATA.No.1 of 1994 on the file of the Court of the Additional District Judge, Madanapalle.

The facts, in brief, are as under :

The father of the petitioners by name Koneti Narayana Swamy along with one Manikyarayappa was cultivating the lands belonging to Rani Nanjammanni. After the death of Manikyarayappa, the father of the petitioners, Narayana Swamy, continued in possession and enjoyment of the lands in question as the cultivating tenant. While so, the landlady Rani Nanjammanni died and the respondents 3 and 4 herein claiming title to the lands in question under a Will said to have been executed by Rani Nanjammanni attempted to interfere with the possession of Narayana Swamy. In the circumstances, he filed O.S.No.100 of 1979 in the Court of District Munsif, Punganur, which was renumbered as O.S.No.429 of 1979 on the file of the Court of Principal District Munsif, Mandanapalle, seeking perpetual injunction restraining the respondents 3 and 4 from interfering with his possession. Pending the said suit, Narayana Swamy, the father of the petitioners, died on 11-10-1984 and the petitioners were brought on

record as the plaintiffs 2 to 4. After full-fledged trial, O.S.No.429 of 1979 was decreed as prayed for holding that the father of the petitioners, being the protected tenants have been continuing in possession and enjoyment of the properties. Against the said judgment and decree the 3rd respondent herein (3rd defendant in O.S.No.429 of 1979) filed an appeal being A.S.No.21 of 1989 on the file of the Court of District Judge, Madanapalle. The said Appeal was allowed by Judgment dated 7-4-1995 holding that the plaintiffs being the cultivating tenants are not entitled to agitate their claim in a civil court. Aggrieved by the same, the plaintiffs/petitioners herein filed S.A.No.313 of 1995 in this Court which was dismissed upholding the view taken by the lower Appellate Court.

It is relevant to note that the third respondent herein claims to have purchased the land in question under a Registered Sale Deed dated 17-12-1984 during the pendency of O.S.No.429 of 1979. Alleging that he was attempting to dispossess the petitioners from the land in question, the petitioners filed A.T.C.No.6 of 1985 on the file of the Special Officer-cum-Principal District Munsif, Punganur under Section 16 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, to declare them as cultivating tenants and also to declare the Sale Deed dated 17-12-1984 executed in favour of the respondent No.3 as null and void and for a consequential injunction restraining the respondents from interfering with their possession. Pending the said proceedings, by order dated 24-7-1985 temporary injunction was granted in favour of the petitioners herein. However, ultimately by order dated 28-7-1994 ATC.No.6/1985 was dismissed. Aggrieved by the same, the petitioners filed A.T.A.No.1 of 1994 on the file of the Court of the Additional District Judge, Madanapalle. Though the learned District Judge declined to grant interim stay, by virtue of the order of this Court dated 30-8-1994 in W.P.No.15511 of 1994 status quo was directed to be maintained by both the parties. While so, the 3rd respondent filed I.A.No.24 of 1995 in A.T.A.No.1 of 1994 with a

prayer to dismiss the said Appeal as abated contending that one of the land owners by name Merupatla Nanjamma who was the respondent No.2 in the Appeal died on 13-8-1992 during the pendency of A.T.C.No.6 of 1985. It was contended that since the petitioners failed to take steps to bring the legal representatives on record within the time, ATA. No.1 of 1994 stood abated. Though the petitioners herein opposed the said petition, the learned Additional District Judge, Madanapalle by order dated 13-4-1995 upheld the objection raised by the 3rd respondent and declared that ATC.No.6 of 1985 stood abated for failure to bring the legal representatives of the 2nd respondent on record in time. It was further declared that the order of Special Officer-cum-Principal District Munsif, Punganur, dated 28-7-1994 dismissing ATC.No.6/1985 was a nullity. The said order dated 13-4-1995 is under challenge in this writ petition.

I have heard the learned Counsel for both the parties and perused the material on record.

At the outset, it is to be noted that the specific plea of the petitioners that the 2nd respondent in ATC.No.6/1985 by name Merupatla Nanjamma was a Spinster and was not survived by any legal heirs, has not been disputed by the respondents.

When the 3rd respondent herein filed I.A.No.24 of 1995 in ATA.No.1 of 1994 to dismiss the Appeal as abated on the ground that the legal representatives of the deceased 2nd respondent were not brought on record, the petitioners herein opposed the same contending that the death of Merupatla Nanjamma was never brought to the notice of the Tribunal by the respondents.

It was also contended that the 3rd respondent having purchased the land in question from the 2nd respondent during her lifetime represents the estate of the deceased and consequently he is the legal representative of the deceased 2nd respondent and since he is already on record as respondent No.3 the Tenancy Petition cannot be

held to be abated.

The said contention was not accepted by the learned Additional District Judge and it was held that since the very validity of sale in favour of the 3rd respondent is the subject-matter of ATC.No.6 of 1985, the presence of the legal heirs of the deceased 2nd respondent is essential for granting or refusing the reliefs prayed for in the Tenancy Petition.

For proper appreciation of the controversy involved, it is necessary to look into the definition of 'Legal Representative' under Section 2 (11) of C.P.C.

> *" 'Legal Representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."*

A plain reading of the above definition would show that the word 'Legal Representative' includes (1) a person who in law represents the estate of a deceased person; and (2) any person who intermeddles with the estate of a deceased person.

The scope of the term 'Intermeddler' has been considered by a Division Bench of this Court in LAXMI DEVI vs. GANDHI KANNAYYA PANTULU & OTHERS (LPA.No.135 of 1971) and by Judgment dated 2-3-1972 it was held as under :

> *"It is now fairly settled that the term "intermeddler" has been used to mean intermeddling with the estate of the deceased person in such a way as to denote an assumption of the authority, an intention to exercise the functions of an executor or an administrator. The term also includes an executor de son tort. What is plain, therefore, is that, in order to constitute a person an "intermeddler" there should be an intention on his part to act as a legal representative, and showed to represent the estate of a deceased. What must follow is that a trespasser, or a person who claims a title in himself*

adversely to the estate of the deceased, cannot, by any stretch of imagination be characterized as an "intermeddler" within the meaning of the said definition. That a transferee during the life time of a deceased although such transfer is characterized as a sham and bogus, is not an intermeddler .. .."

In the light of the principles laid down in the above decision, it is clear that the 3rd respondent who claims to have purchased the land in question under a Registered Sale Deed dated 17-12-1984 from late Merupatla Nanjamma during her lifetime is undoubtedly an "intermeddler" within the definition of Section 2 (11) of C.P.C.

The law is also well settled that where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, the proceeding will not abate. (vide MAHABIR PRASAD v. JAGE RAM[1])

In such circumstances, at the most, what is required is that the legal representative who is already on record should be described, by an appropriate application that he is also on the record as legal representative of the deceased party.

The said principle has been reiterated by the Apex Court in MOHAMMAD ARIF v. ALLAH RABBUL ALAMIN AND OTHERS[2].

It is true that in the case on hand such application was not made before the Special Officer in ATC.No.6 of 1985. However the same being only a technical lapse and particularly having regard to the plea of the petitioners that they were not aware of the death of Merupatla Nanjamma, I am unable to hold that the failure to make such application should result in abatement of the proceedings.

As expressed above, since the 3rd respondent, who is the legal representative of the deceased 2nd respondent, is already on record the estate of the deceased 2nd respondent has been represented and therefore there is no necessity to make an

application for bringing the legal representatives on record. The conclusion of the learned Additional District Judge that the 3rd respondent is not an intermeddler merely on the ground that the very validity of sale in favour of the 3rd respondent is in question in the tenancy case is erroneous and not in accordance with the settled principles of law.

For the aforesaid reasons, the order of the learned Additional District Judge in ATA.No.1 of 1994 in dismissing the Appeal without going into the merits of the case on the ground that the Tenancy Case itself stood abated is illegal and unsustainable.

Accordingly, the order impugned is set aside and the Writ Petition is disposed of with a direction that ATA.No.1 of 1994 should be heard and decided on merits in accordance with law. The petitioners herein are granted liberty to make an appropriate application to describe the 3rd respondent in ATA.No.1 of 1994 as legal representative of the deceased 2nd respondent. If any such application is made within a period of four weeks from the date of receipt of this order, the Court below shall consider the same and proceed with the main appeal on merits. No costs.

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G. ROHINI, J.

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[1] AIR 1971 Supreme Court 742

[2] AIR 1982 Supreme Court 948 (1)